The inference that the third appellant was the escaped man was a strong one and his mere presence in the jungle at that time was highly suspicious and in our view the Magistrate was justified in calling on him for his defence. The third appellant elected to give evidence and in the course of it admitted that he was the man who had jumped off the platform, and that he had for a day and half taken part in the cooking operations, although he denied that he had handled the actual vessels in which prepared opium was detected or that he knew that opium was in fact being prepared. In our view his case is indistinguishable from that of the second appellant, and again applying the proviso to section 4(1) of the Criminal Appeal Act, 1907, we dismiss his appeal against conviction.

With regard to the eighth appellant the only evidence regarding him is that he was on the launch. The Court is of the clear opinion that his conviction cannot be sustained and his appeal is allowed.

With regard to the sentences imposed on the first, second and third appellants, all were substantially reduced by Bodley J. on appeal. Bearing in mind the extreme gravity of the offences committed by the three appellants these sentences do not err in point of severity and we therefore order the same periods of imprisonment and fines as Bodley J.'s, that is to say: first appellant, two years' rigorous imprisonment and a fine of $4,000 (or in default a further nine months' rigorous imprisonment) on the first charge, and two years' rigorous imprisonment, to run concurrently, on the second charge; second appellant, eight months' rigorous imprisonment and a fine of $500 (or in default a further six months' imprisonment); third appellant, eight months' rigorous imprisonment and a fine of $1,000 (or in default a further six months' imprisonment). The prison sentences will run from the date of conviction before the Magistrate, making due allowances for the periods appellants have been released on bail, that is to say from the 12th March, 1955. The fine of $750 paid by the eighth appellant will be refunded to him.

*Order accordingly.*

Solicitors for the appellants: *Donaldson & Burkinshaw.*

## *Re* KETUNA BIBI

[R. Cr. J. (Buhagiar J.) July 30, 1955]

[K. L. — Criminal Revision No. 13 of 1955]

*Penal Code s. 406 — Criminal breach of trust — Whether a Muslim wife can commit criminal breach of trust of her husband's property — Muslim law.*

**In this case the accused was charged with criminal breach of trust of property belonging to her husband. At the trial after the evidence of the witnesses had been given, the learned Magistrate ruled that the charge was groundless, as he held that a wife has joint possession of her husband's property and cannot be charged with disposing of the property of her husband in any way.**

**Held: in Muslim law there is no community of interest between husband and wife and therefore it is possible for a Muslim wife to commit theft or criminal breach of trust of her husband's property.**

*Case referred to:—*

(1) *R. v. Khatabai* (1869) 6 B.H.C.R. 9.

CRIMINAL REVISION.

*J. P. Kirby* (Federal Counsel) for the Public Prosecutor.

Respondent absent.

*Cur. Adv. Vult.*

**Buhagiar J.**: —Ketuna Bibi daughter of Noordin was charged in the Magistrate's Court, Kuala Kubu Bharu with an offence punishable under section 380 of the Penal Code. It was a case of theft in a dwelling house by a wife of property belonging to her husband. When the case came to be heard on the 31st March, 1955 the original charge was amended by the prosecution to one of criminal breach of trust, an offence punishable under section 406 of the Penal Code. The amended charge was explained to the defendant who claimed trial; the evidence of Abdulla Khan son of Noor Mohamed, a prosecution witness, was heard. On the application of the prosecution an adjournment was granted.

Proceedings were resumed on the 13th April, 1955, and before any further evidence was heard, the learned Magistrate ruled that the charge was groundless and discharged the defendant under section 173(g) of the Criminal Procedure Code, such discharge not amounting to an acquittal.

In his grounds of judgment the learned Magistrate stated that in making the said order he relied on the commentary to section 406 in *Ratanlal,* The Law of Crimes where in the 17th edition at page 998 the following passage appears: "A wife has joint possession of her husband's property and cannot, therefore, be indicted for disposing of it in any way. According to English law she can be convicted of larceny as a bailee."

The matter was brought to my attention by the Deputy Public Prosecutor. I decided to exercise the powers of revision in this case. The accused refused on two occasions to accept service of the date fixed for hearing although the contents and purport of the notice were explained to her; she did not appear on the date of the hearing; I considered that under section 325(ii) of the Criminal Procedure Code the accused had been given the opportunity of being heard in her own defence and proceeded with the hearing in her absence.

The learned Magistrate seems to have overlooked the footnote to the first part of the passage quoted by him from Ratanlal which reads as follows: "This decision does not seem to be a sound one. If a wife removing the separate property of her husband is guilty of theft, there is no reason why she should not be guilty of criminal breach of trust in respect of such property." The learned Magistrate does not seem to have given any consideration to the status of the defendant and her husband, that is whether they are Muslims; no evidence had as yet been adduced by the prosecution as to the status of the accused and if and when such evidence is adduced the question that will arise for consideration is whether the husband and wife have joint ownership.

In English law the position is clear; at common law husband and wife are one person in law and the wife cannot steal her husband's goods; but under certain sections of the Married Women's Property Act, 1882 a wife may be guilty of stealing her husband's goods in certain circumstances.

But such unity of interest as there is between husband and wife in English law, does not, in my opinion exist as between husband and wife who profess the religion of Islam, and in Indian cases it has been laid down that a Mohamedan wife may be convicted of stealing from her husband. Thus in *Reg. v. Khatabai, wife of Sheik Ismael*[1], it is stated:

"The act admitted by the accused woman amounts to abetment of theft, and, under section 114 of the Indian Penal Code, she may be deemed to have committed theft. The female in question was a Muhammadan, and consequently there was not between her and her husband the same union of interest which exists between an English husband and wife (vide *Baillie's* Digest of Muhammadan Law, introduction xxiv, and p. 145); and among the list of articles removed with the abetment of the wife there are some which under that law would be recognised as the exclusive property of the husband."

In my opinion, in Mohammedan law there is not such community of interest between husband and wife as to make theft or criminal breach of trust; impossible.

I, therefore, set aside the order made by the learned Magistrate with a direction that the case be referred back to the Magistrate for continuation of the proceedings.

*Order accordingly.*

## CHUA SAI NGOH (f) v. BEH AI MENG

[O. C. J. (Thomson J.) May 19, 1955]
[Ipoh — Civil Suit No. 115 of 1954]

*Landlord and Tenant — Land — Claim for possession — Whether a plank-walled house built on concrete platform part of land or chattel — Disclaimer of landlord's title — Tenant saying landlord owner of land but not of house — Whether sufficient disclaimer — Land Code (Cap. 138), s. 42(v) — Yearly tenancy — Notice to quit.*

This was a claim by the plaintiff for a declaration that she was the lawful owner of certain houses built on land belonging to her and for possession of the said houses. The houses were plank-walled houses built on concrete platforms and were built by the defendant before the purchase of the land by the plaintiff. The defendant had been paying rent to the plaintiff at the end of each year for his occupation of the land. In 1953 the plaintiff had a quarrel of some sort with the defendant, and subsequently she wrote a letter to the defendant purporting to give him a month's notice to quit the premises.

The defendant contended that the plaintiff was only the owner of the land but not of the houses. The plaintiff alleged that the defendant's conduct amounted to disclaimer of her title and therefore no notice to quit was required.

**Held:** the houses in question were part of the land on which they stood and were thus the property of the proprietor of the land, the plaintiff.

[**Editorial Note:** at the conclusion of the judgment, which is not reproduced in this report, His Lordship dealt with the questions of orders for ejectment and possession, and decided that she could not succeed because in this case by claiming to be the owner of the houses the defendant had not repudiated the relationship of landlord and tenant, and that it was not a sufficient disclaimer which could justify his ejectment without notice, and that as it was an annual tenancy it could only be determined by giving half a year's notice to quit.]

*Cases referred to:—*

(1) *In re Tiambi bt. Ma'amin* (1904), Innes 285.
(2) *Goh Chong Hin & Anor. v. Consolidated Malay Rubber Estates Ltd.* 5 F.M.S.L.R. 86.
(3) *Kiah binte Hanapiah v. Som binte Hanapiah* (1953) M.L.J. 82.
(4) *Harnam Singh v. Sambasivam* (1954) M.L.J. 251.
(5) *Kwek Kim Hock v. Ong Boon Siong* (1954) M.L.J. 253.
(6) *Kartar Singh v. Pappa* (1954) M.L.J. 193.
(7) *Wake v. Hall* (1882 — 1883), 8 App. Cas. 195.
(8) *Sayer v. Phillipson* (1931) 2 Ch. 183, 209.
(9) *Leigh v. Taylor* (1902) A.C. 157, 162.
(10) *Billing v. Pill* (1953) 2 All E.R. 1061; (1953) 3 W.L.R. 758; (1954) 1 Q.B. 70.

CIVIL SUIT.

*N. Sharma* for the plaintiff.

*W. J. Huntsman* for the defendant.

*Cur. Adv. Vult.*

**Thomson J.** : — The principal question at issue in this case relates to the ownership of three houses on certain land on Pangkor Island and that question in its turn raises the question of whether these houses are movable property or whether they are immovable property attached to and forming part of the land on which they are built.

[His Lordship then stated the history of the houses and facts of the case which are not relevant for the purposes of this report and continued:]

I propose in the first place to deal with the question of the ownership of the houses.